

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

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|--|---|--------------------|
| VICKI ANN SAKA |) | |
| Claimant |) | |
| VS. |) | |
| |) | Docket No. 225,582 |
| THE BOEING COMPANY |) | |
| Respondent |) | |
| AND |) | |
| |) | |
| INSURANCE COMPANY STATE OF PENNSYLVANIA |) | |
| Insurance Carrier |) | |

ORDER

Respondent appealed the December 12, 1997, preliminary hearing Order entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment for a right foot injury. Respondent appealed questioning whether claimant's right foot injury arose out of and in the course of her employment with respondent. That is the only issue for Appeals Board review.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the briefs of the parties, the Appeals Board finds as follows:

The issue raised by the respondent is a jurisdictional issue listed in K.S.A. 1997 Supp. 44-534a.

On March 21, 1997, claimant was working as a sheet metal assembler on the 1:30 p.m. to 10:00 p.m. shift for the respondent. Claimant testified, while she was in the process of cleaning up at the conclusion of her work shift, she stumbled on a stack of rugs, caught her right foot in an air hose which twisted her right foot sideways. Claimant testified she then felt a burning sensation in her right foot. Claimant testified she did not notify her supervisor of her injury at that time because it was late and she did not know the severity of the injury. Claimant's alleged injury date of March 21, 1997, was a Friday night and claimant was not required to return to work with respondent until Monday, March 24, 1997.

Claimant testified that over the weekend her foot became severely swollen. After claimant arrived at work on Monday, March 24, 1997, she testified she immediately reported the injury to her supervisor. Claimant was seen at Boeing Central Medical on March 24, 1997, and the medical report indicated she had a swollen right foot. The Boeing Central Medical report also indicated that claimant was diagnosed with a fractured metatarsal of the right foot. X-rays of her right foot were taken at that time.

Claimant continued working and she continued to be treated by Boeing Central Medical for her right foot injury until May 14, 1997. Because claimant's foot was not healing properly, respondent then referred claimant for evaluation and treatment to orthopedic surgeon Steven J. Howell, M.D., who specializes in foot and ankle surgery.

Dr. Howell first saw claimant on May 22, 1997, and, after an examination, placed her in a walking cast. Claimant remained under Dr. Howell's care as of the date of the preliminary hearing, December 11, 1997. However, the respondent, in July of 1997, notified claimant that no further medical treatment for her fractured right foot would be provided under the Workers Compensation Act. Claimant then obtained medical treatment for her injured right foot through her private health insurance provider.

The respondent terminated claimant's workers compensation benefits based on the opinions expressed by the radiologist who initially interpreted the x-rays of claimant's right foot taken on March 24, 1997, and by the radiologist who subsequently examined those x-rays on July 24, 1997. Both of these radiologists expressed the opinion that claimant's right foot fractures were not acute but were from two to several weeks old. Respondent contends that this objective evidence is proof that claimant's right foot injury could not have occurred at work as she described.

On the other hand, claimant contends she had no symptoms in her right foot before the March 21, 1997, injury, and she did not do anything over the weekend that would have caused injury to her right foot. Furthermore, Dr. Howell, in a report dated October 30, 1997, admitted into evidence at the preliminary hearing, opined that claimant could have suffered a stress fracture before the accident at work and then that accident certainly could have accelerated or aggravated the preexisting stress fracture.

Additionally, the Administrative Law Judge ordered claimant to undergo an independent medical examination on October 24, 1997, with Naomi N. Shields, M.D., an orthopedic surgeon also specializing in foot and ankle surgery. Dr. Shields had the benefit of claimant's medical treatment records, the March 24, 1997, radiographs, and radiographs taken of claimant's right foot on the date of the examination. In a report dated October 24, 1997, admitted into evidence at the preliminary hearing, the doctor, after examining the March 24, 1997, radiographs, concluded it was extremely difficult to state whether claimant's right foot fractures were acute or a week or two old. She went on to conclude, within medical probability, that claimant's right foot injury was the result of the March 21, 1997, work-related accident. The doctor based her opinion on claimant's history that she had no problems with pain and discomfort in her right foot prior to the accident and the fact the mechanism of injury was consistent with claimant's fractures.

The Appeals Board finds claimant's testimony, coupled with the opinions of Dr. Howell and Dr. Shields, contained in the preliminary hearing transcript, is persuasive evidence and supports the Administrative Law Judge's preliminary hearing Order that granted claimant medical treatment.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order of Administrative Law Judge Nelsonna Potts Barnes should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of February 1998.

BOARD MEMBER

c: Chris A. Clements, Wichita, KS
Vaughn Burkholder, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director